

CONFIDENTIAL

INVESTIGATIVE REPORT OF PATRICK J. FIEDLER

TO

**HON. RANDY R. KOSCHNICK, DIRECTOR
OF THE OFFICE OF STATE COURTS**

AND

**HON. JENNIFER R. DOROW, CHIEF JUDGE
OF THE THIRD JUDICIAL DISTRICT**

**REGARDING ADMINISTRATIVE INVESTIGATION AS TO
ALLEGATIONS MADE BY JUDGE JOSEPH W. VOILAND
CONCERNING CERTAIN OZAUKEE COUNTY OFFICIALS**

CONFIDENTIAL

EXECUTIVE SUMMARY

Attorney Patrick J. Fiedler conducted a confidential administrative investigation regarding allegations made by Judge Joseph W. Voiland concerning certain Ozaukee County Officials. I find that there is no basis to believe that anyone has violated Wis. Stat. § 946.12, Misconduct in Public Office. There is also no basis to find that anyone has violated any other criminal statute. The Clerk of Courts has taken appropriate measures to correct past errors and to ensure that court records are accurate going forward. The Clerk of Courts now has taken appropriate steps to comply with the statutory requirement relating to segregation of fees on family cases and she should continue those efforts. The Director of Family Court Services for Ozaukee County is Court Commissioner Barry Boline. There is a serious communication problem between Judge Voiland and other Ozaukee County Court Officials.

BACKGROUND

In February 2018, I was retained by the Office of State Courts to conduct a confidential administrative investigation. The retainer agreement states that the scope of my services will include investigation of claims by Judge Joseph Voiland concerning certain Ozaukee County Officials. My charge was specifically defined in a February 26, 2018 memo from Third Judicial District Chief Judge Jennifer R. Dorow (*See attached Exhibit #1.*) That charge is as follows:

Charge: Under the direction of Third Judicial District Chief Judge Jennifer Dorow, to investigate claims by Judge Joseph Voiland concerning Ozaukee County Officials, including the following (allegations are in summary form. Please consult with Judge Voiland regarding specifics and supporting documentation).

1. Alteration and/or deletion of CCAP records by the Clerk of Circuit Court/Register in Probate, including but not limited to back dating of case assignments, removal of hearings from calendar, correction of docket

entries without proper case file documentation/ notation, and destruction of case files. (If these actions occurred in the past, determine whether they are continuing.)

2. Misuse of Register in Probate/Probate Registrar authority, including but not limited to granting of adjournments in formal cases and improper designation of cases (formal vs. informal and the interplay between the two and whether such actions were done without the approval of the assigned judge) and the reason(s) for doing so.
3. Custody Study and related issues, including but not limited to the failure of the county treasurer to segregate fees as required by Wis. Stat. § 814.615, and the failure to name and appoint a director of family court services as required by Wis. Stat. § 767.405(1m)(a).
4. Other similar or related allegations as may be brought to your attention by any of the Ozaukee County judges or Chief Judge Jennifer Dorow.

The investigation included review of numerous documents and interviews of several individuals. Additionally, I draw upon by own experiences as a Dane County Circuit Judge for 18 years, during which time I served in every rotation and handled every type of case that was under review in this investigation.

INVESTIGATION

The Wisconsin Department of Justice, Division of Criminal Investigation (DOJ) conducted an earlier investigation into the allegations made by Judge Voiland. This investigation was commenced upon receiving a phone call from Judge Voiland on May 9, 2016 regarding a complaint of CCAP records having been changed/tampered with. The concern was whether there had been a violation of Wis. Stat. § 946.12, Misconduct in Public Office, a Class I felony.

The DOJ conducted an extensive investigation which included several interviews and review of numerous documents. [Note that the DOJ investigative report is public

record and I have reviewed the same.] The DOJ investigative report concludes with the following:

On September 26, 2017, Assistant Attorney General (AAG) Michelle Viste sent an email to Special Agent (SA) John R. Culver, Jr. and Special Agent in Charge (SAIC) David R. Klabunde in which she stated, "I am just writing to confirm that the DLS [Division of Legal Services] has closed the Ozaukee Co. case as a non-prosecution. Please let me know if you have any questions."

The Office of State Courts retained me in February 2018 to conduct the investigation described above.

INTERVIEW PROTOCOL

At the beginning of each interview, I advised each person that I was retained by the Office of State Courts, at the direction of Judge Randy Koschnick and Chief Judge Jennifer Dorow, to conduct an independent investigation regarding allegations made by Judge Joseph Voiland. Further, that submitting to the interview was voluntary and the person could stop the interview at any time. I also advised each person of their right to have an attorney present and that they should feel free to ask any questions as the interview was conducted. I asked each interviewee to be as truthful and accurate as possible. I further told them not to assume that I would be asking all of the right questions and that they should feel free to volunteer any information that may be helpful. At the conclusion of each interview, I told them to feel free to contact me if they had any additional information. I also asked that they keep the details of the interview confidential.

INTERVIEWS

Five individuals were interviewed: Judge Joseph Voiland, Judge Paul Malloy, Judge Sandy Williams, Court Commissioner Barry Boline and Clerk of Courts Mary Lou Mueller. Additionally, at my request, Corporation Counsel Rhonda Gorden authored a memo for my review. This report summarizes the interviews that revealed the most relevant information. The interviews focused on the Voiland allegations

contained in the DOJ report referenced above. Additionally, each interviewee was given the opportunity to provide any additional information.

In the interest of completeness, I created an interview outline that contained the allegations made by Judge Voiland as referenced in the DOJ report. (*See attached Exhibit #2.*) Judge Voiland was given the opportunity to address all of these allegations. The other interviewees were questioned regarding specific allegations about which they might have knowledge.

Judge Joseph Voiland

Judge Voiland was interviewed in person on three separate occasions. He was cooperative and answered all questions. Voiland graduated from Marquette University Law School in 2002. He was a judicial law clerk for two years and then in private practice prior to becoming an Ozaukee County Circuit Judge on August 1, 2013. As do all three judges in Ozaukee County, he has handled every type of case. We discussed the specific allegations related to the various cases and matters.

Judge Paul Malloy

Judge Malloy was first interviewed in person and then a subsequent interview was conducted by phone. He was cooperative and answered all questions. Malloy graduated from John Marshall Law School in 1985. Prior to becoming an Ozaukee County Circuit Judge in 2002, he was the Ozaukee County District Attorney and an attorney in private practice. Presently, he is the Presiding Judge in Ozaukee County. Judge Malloy has handled every type of case. We discussed the specific allegations as to which he had any knowledge.

Judge Sandy Williams

Judge Williams was interviewed in person. She was cooperative and answered all questions. Williams graduated from Hamline Law School in 1983. She served as both an assistant district attorney and the Ozaukee County District Attorney prior to becoming an Ozaukee County Circuit Judge in 2009. Judge Williams has handled every type of case. We discussed the specific allegations as to which she had any knowledge.

Court Commissioner Barry Boline

Commissioner Boline was interviewed in person. He was cooperative and answered all questions. Boline graduated from Drake Law School in 1994. He was in private practice until becoming the Ozaukee Court Commissioner in 2012. We discussed the specific allegations as to which he had any knowledge.

Clerk of Courts Mary Lou Mueller

Clerk of Courts Mueller was interviewed in person on two separate occasions and a third interview was conducted by phone. She was cooperative and answered all questions. Mueller obtained a degree in criminal justice management from Concordia University in 2005. Starting in 1999, Mueller was an employee of the Clerk of Courts Office. She became the Ozaukee County Clerk of Courts in 2011. She is also the Register in Probate, the Probate Registrar and the Clerk of Juvenile Court. As such, she and her office handle every type of case. We discussed the specific allegations as to which she had any knowledge.

NON-INTERVIEW BASED INVESTIGATION

Corporation Counsel Rhonda Gorden

At my request, Ozaukee Corporation Counsel Gorden prepared a memo regarding her knowledge of accounting for family court services. Reference to portions of that memo is made below.

ALLEGATIONS

- 1. Alteration and/or deletion of CCAP records by the Clerk of Circuit Court/ Register in Probate, including but not limited to back dating of case assignments, removal of hearings from calendar, correction of docket entries without proper case file documentation/notation, and destruction of case files. (If these actions occurred in the past, determine whether they are continuing.)**
- 2. Misuse of Register in Probate/Probate Registrar authority, including but not limited to granting of adjournments in formal cases and improper designation of cases (formal vs. informal and the interplay between the two and whether**

such actions were done without the approval of the assigned judge) and the reason(s) for doing so.

Judge Voiland had several concerns relating to these allegations. They are set forth in Exhibit 2. Most of these allegations relate to Clerk of Courts Mary Lou Mueller.

As mentioned above, I interviewed Mueller in person on two occasions and by phone on a third occasion. Also, Mueller provided me with copies of all court documents which I requested.

Case No. 13PR84 - In the Estate of Mary H. Malinowski

Judge Voiland's concerns were that a date had been changed for an Order to Show Cause (OTSC) hearing and that the case description had been changed from "formal" to informal."

Mueller provided general information on the handling of probate cases. If a case is designated as "formal" the commissioner handles everything except for evidentiary matters which are handled by the judges. Mueller stated that this case was always designated as formal. Mueller stated that Judge Voiland had sent her an email requesting that she schedule eleven cases, including this case, for a hearing. She then scheduled this case for a review hearing before Judge Voiland. Mueller generated a court notice on March 9, 2016 to be sent by US mail and the notice was printed. She does not know if the notice was mailed and presumes that it was not because she erased the review hearing event. Mueller did so after seeing that the case was already scheduled for a hearing before Commissioner Boline. When Judge Voiland became aware of this, he told Mueller to put it back on his calendar as an OTSC hearing; Mueller did so. According to Mueller, Judge Voiland had a hearing on April 6, 2016 and Commissioner Boline had a hearing on April 27, 2016. At his hearing, Boline ordered that the case be certified (sent) to Judge Voiland. Mueller concluded by stating that she would not have erased the April 6, 2016 hearing from CCAP if the notices had been mailed.

I questioned Mueller as to whether her scheduling was in any way affected by the fact that the Personal Representative was Attorney Rebecca Waldera. Mueller replied that Waldera is an acquaintance but that this had nothing to do with her scheduling. She also stated that there are no orders for extension of time on this file.

Mueller then explained that if a probate case is changed from formal to informal, or from informal to formal, this creates an event on CCAP. Mueller stated that she never has changed a case from formal to informal so that an attorney could have more time. She noted that as the Probate Registrar, she has given extensions of time if the case is within the time guidelines but, if the case is beyond the guidelines, she will then schedule it for an OTSC hearing in front of the court commissioner. Mueller stated that as Probate Registrar, she manages the informal cases.

Mueller gave a historical background as to her handling of probate cases. In 2002, she started as the Register in Probate/Probate Registrar/Probate Commissioner. During her time, she has worked with Judge Walter Swietlik, Judge Joseph McCormick, Judge Tom Wolfgram, Judge Paul Malloy, and Judge Sandy Williams, all of whom assumed the bench prior to Judge Joseph Voiland. Mueller was assigned the task of managing both formal and informal probate cases. She would do orders for extensions and she did not have to change the case status, *i.e.*, from formal to informal, because those judges left it to her judgment. It was up to her discretion if something had to be brought to a judge's attention. Mueller stated that she no longer signs extensions of time as Mary Lou Mueller, Probate Registrar (electronic files) or Mary Lou Mueller, Register in Probate (paper files). She stated that she quit doing so on Voiland cases after he told her he did not want her doing this and that she quit doing so on all other assigned cases after the DOJ interviewed her. Mueller noted that this relates to formal cases and that she still has the authority to do extensions of time on informal cases.

Judge Malloy provided his perspective as to the general handling of probate cases in Ozaukee County. In his opinion, Mueller keeps a good eye on the status of cases and

that she and her staff are on top of this. He believes that if there are any problems regarding the age of a case, Mueller would let him know and put the case on his calendar. As to how she handles granting extensions of time, to his knowledge it has been consistent since he started as a judge. Malloy stated that he is "99% sure that he has given the Clerk of Court the authority to grant an extension in formal probate cases."

Judge Williams stated that she will review probate cases with Mueller or her designee to keep them on track. To her knowledge, Mueller has not changed a case designation from formal to informal without her approval.

I find that Judge Voiland was correct in his allegation that a CCAP entry was changed and that Mary Lou Mueller was in error in erasing the CCAP entry of the aforementioned scheduled review hearing before Judge Voiland. Instead, Mueller should have consulted with Judge Voiland, advised him that a review hearing was already scheduled before Commissioner Boline, and asked Voiland if he still wanted to conduct his own review hearing. This was a decision to be made by Judge Voiland and not by Mary Lou Mueller. I also find that Mueller took this action based upon her belief that this was the more efficient course to take and not because she was attempting to usurp the authority of Judge Voiland.

Case No. 13PR130 – In the Estate of Emanuel Washington

Judge Voiland expressed a concern that he doesn't know how this case had suddenly appeared on his docket calendar; the transaction record shows that Mary Lou Mueller had assigned the case to Voiland on March 31, 2016 and that she had backdated the case assignment to July 13, 2014.

Mueller stated that this is true. Judge Voiland rotated into probate on August 1, 2014. (All three Ozaukee County Judges take a 2-year stint in probate on a rotating basis. The incoming judge is assigned all pending probate cases.) Voiland rotated into probate on August 1, 2014. He wanted to be sure that all of his cases were assigned to

him. Mueller stated that on March 31, 2016 it came to her attention that the case was not formally assigned to Voiland even though he had been in probate since August 1, 2014. She then assigned the case to Voiland and backdated it to July 13, 2014. When I asked Mueller why it was backdated to July 13, 2014, she replied that it was an error on her part and it should have been backdated to July 31 or August 1, 2014.

Mueller noted that Judge Voiland wanted all Branch 2 (Voiland's branch) cases to be assigned to him even if the case was inactive and even if there had been no post-judgment activity. Mueller stated that in accommodating this directive, her first priority was to be sure that all open cases were assigned to Voiland and she then checked on closed cases.

I find that the explanation by Mary Lou Mueller is reasonable. As an aside, the situation described by Judge Voiland also happened to me on occasion when I was a judge and an older case was reassigned to me.

Case No. 11FA310 – In RE the marriage of Robert Roland Hanke and Antonia E. Hanke

Judge Voiland expressed a concern that Judge Williams had appointed a GAL (guardian ad litem) on this case even though the case was assigned to Voiland.

Judge Williams stated that family cases are assigned to a particular judge and that the court commissioner conducts certain hearings. If Commissioner Boline is not available for a scheduled hearing, then either she or Judge Malloy will cover it. She noted that court commissioner hearings do not have a court reporter but are tape recorded. Williams does not recall if she handled the November 17, 2014 hearing but if she did then her name should be on the court record. She also noted that the deputy clerk who was at the hearing may have overlooked the fact that the minute sheet was partially completed to reflect Boline as presiding since it was on his calendar.

Commissioner Boline stated that he has no independent recollection of the November 17, 2014 hearing but that he did review the file. Based upon his file review, he states that Judge Williams covered that day as he was out, that Williams appointed a GAL, and that he signed the order appointing the GAL.

Mueller stated that the record still indicates that Commissioner Boline presided at the November 1714 hearing but that a transcript clearly shows that it was Judge Williams who presided. At the hearing Judge Williams appointed a GAL and Commissioner subsequently signed the order appointing a GAL. Mueller stated that a deputy clerk mistakenly entered Boline's name into the record even though Williams had presided at the hearing. Mueller stated that she has not corrected the record due to the pending investigation. Mueller stated that when the investigation has been completed, she will have the record corrected with a notation as to the error and the correction.

I find that the explanation by Mary Lou Mueller is reasonable and that the error made by the deputy clerk is an innocent error. I further understand why Mueller is waiting to correct this error until this investigation is completed and I find that this decision to wait is reasonable.

16JD2 – John Doe case

Judge Voiland had expressed a concern that the case file was destroyed.

Mary Lou Mueller stated that on January 11, 2016, Paul Ammerman filed a petition. Ammerman is a prison inmate and the petition was confusing. Deputy Clerk Connie Mueller gave the petition to Judge Malloy. On January 21, 2016, Malloy, apparently believing the petition to be requesting a John Doe hearing, directed Connie Mueller to send a letter to District Attorney Adam Gerol asking for Gerol's position on the Ammerman petition. [Note – This would be pursuant to Wis. Stat. § 968.26(2).] The petition and the letter to DA Gerol were docketed on January 21, 2016 and assigned Case No. 16GF23. On March 1, 2016, Assistant District Attorney Patti Wabitsch replied

to the January 21, 2016 Malloy letter stating that the DA was refusing to issue charges. On March 2, 2016, Judge Malloy issued a decision denying Ammerman's petition for a John Doe proceeding; this order was docketed the same day.

On March 10, 2016, Connie Mueller again reviewed the petition which had been filed on January 10, 2016. She thought that the petition should have been designated a JD case and not a GF case. She then opened up Case No. 16JD2 but did not place any documents in that file. Subsequently, Connie Mueller discussed this matter with Mary Lou Mueller. Mary Lou Mueller directed Connie Mueller to erase all references to 16JD2.

Mary Lou Mueller told me, that in retrospect, her decision to erase 16JD2 was a mistake. She explained that the Clerk of Courts Office was not that familiar with John Doe cases and, at that time, did not have a good policy/procedure in place. Mueller explained that she became Clerk of Court on January 1, 2011 and since that time up to the filing of the petition by Paul Ammerman, only two cases had been given the JD case designation, 11JD1 and 14JD1. Mueller stated that the present policy in her office is that if a petition indicates "John Doe", it is filed with as a JD case. She also stated that if a filing error is now made on any type of case, this is reflected in the court record so that CCAP will accurately reflect corrections and where documents are located. As an example, Mueller stated that in this particular case, the record should state that 16JD1 was "opened in error; see Case No. 16CF23." Mueller has not made this correction on this case. She stated that she follows this procedure on all other cases opened in error but has not done so on this case because this case is part of an investigation and she is waiting until the investigation has been completed.

I find that Judge Voiland was correct in his allegation that CCAP records had been erased and that Mary Lou Mueller made an error in erasing the record as to 16JD2 but that she has acknowledged her error and that she now has a procedure in place to ensure that this type of error will not reoccur. I further find that her decision to wait to

correct the error on this case until after this investigation is completed is a reasonable decision.

As to all types of cases, Mueller stated that her office processes over 100,000 documents per year. The processing of this number of cases requires that 100s of thousands of data entries be made to record events. Mueller stated that her policy, adopted after the DOJ investigation, is that if a correction of a spelling or grammar error is made, there is no notation made. However, all substantive corrections result in the entry of a notation that a correction has been made. I find that this procedure is appropriate.

Judge Voiland's judicial dashboard

Judge Voiland had expressed a concern regarding his judicial dashboard. (Each judge has a computer dashboard that shows all of that judge's assigned cases and the age of each case.) Voiland noted that certain cases were not shown on his dashboard one month and then the next month a case would show up as "overdue/late" by a significant amount of time. He further stated that he did not understand why an "overdue/late" case would not have shown on his dashboard the previous month.

Mary Lou Mueller stated that this was due to the fact that probate cases were reassigned from Judge Malloy (who had rotated out of probate) to Judge Voiland (who had rotated into probate). The reassignment of the case does not result in a change of the age of the case. Thus, the judicial dashboard would designate "overdue/late" even though Judge Voiland had just had the case reassigned to him.

I find that the explanation by Mary Lou Mueller is reasonable. As an aside, the situation described by Judge Voiland also happened to me on occasion when I was a judge and an older case was reassigned to me.

Case No. 15PR17 – In the Estate of Janice E. Garsha

Judge Voiland had expressed a concern that Mueller had changed the case designation from formal to informal without Voiland’s authorization.

Mueller stated that she had signed an order for extension of time and she had mistakenly checked the box “Informal Administration.” She further stated that the case was still in formal status as reflected on CCAP. Mueller again provided an explanation as to how the status of a probate case is changed, the extent of her authority, and a historical background as to her handling of probate cases. (For that explanation and historical background, see above discussion on Case No. 13PR84 – Estate of Malinowski and the comments by Mueller at page 8 of this report.)

I find that Mueller’s explanation as to her mistakenly checking the wrong box is reasonable. I further find that her mistake is human error and is not an attempt to usurp the authority of Judge Voiland

Case No. 15PR79 – In the Estate of Kenneth E. Goetschel

Judge Voiland had expressed a concern that Mueller had changed the case designation from formal to informal without Voiland’s authorization.

Mueller stated that she had signed an order for extension of time and she had mistakenly checked the box “Informal Administration.” She further stated that the case was still in formal status as reflected on CCAP. Mueller again provided an explanation as to how the status of a probate case is changed, the extent of her authority, and a historical background as to her handling of probate cases. (For that explanation and historical background, see above discussion on Case No. 13PR84 – Estate of Malinowski and the comments by Mueller at page 8 of this report.)

I find that Mueller’s explanation as to her mistakenly checking the wrong box is reasonable. I further find that her mistake is human error and is not an attempt to usurp the authority of Judge Voiland.

- 3. Custody Study and related issues, including but not limited to the failure of the county treasurer to segregate statutory fees as required by Wis. Stat. § 814.615, and the failure to name and appoint a director of family court services as required by Wis. Stat. § 767.405(1m)(a).**

Judge Voiland expressed concerns that Wis. Stat. § 814.615 was not being followed. That statute requires that statutory fees must be segregated into a separate account and maintained by the county treasurer. Judge Voiland also stated that there had been a failure to appoint a director of family court services as required by Wis. Stat. § 767.405(1m)(a).

Corporation Counsel Gorden, in her memo, stated that her knowledge of accounting for family court services accounts is based upon what she has been advised of by the Clerk of Courts' staff. Gorden was advised that mediation fees are kept in a separate county account as well as court filing fees allocated to family court services. The custody study fee deposits were maintained in a county clerk of court account. Money deposited for mediation fees is forwarded to the county treasurer monthly. Gorden stated that she recently discussed with the Clerk of Court that there was no real reason to treat the custody study fees differently than the mediation fees because, in both cases, funds are paid out by the court or pursuant to statute and checks must be issued for both services to third parties. The Clerk of Court's office agreed and it is Gorden's understanding that changes were underway to manage the custody study fees in the same manner as the mediation fees. Since then, it is Gorden's understanding that new account numbers were created on the general ledger to account for custody study fees separately. To Gorden's knowledge, no accounting changes were made when the County passed the family custody study ordinance in 2016. What appeared to Gordon in discussing these matters with the Clerk of Court is that careful accounting was done of both mediation fees and custody study fees and all money is accounted for and properly allocated. Gorden stated that she spoke with Ozaukee County Treasurer Josh Morrison as to whether he has observed any changes in accounting regarding custody

studies. Morrison advised her that has not seen any changes other than the recent creation of new general ledger account numbers as indicated by the Clerk of Court.

Clerk of Courts Mueller provided me with a memo and a flowchart describing the handling of fees in family cases. Her information appears to be consistent with the information her office provided to Gorden. Mueller explained at length the process regarding the handling of fees for mediation and studies.

Wis. Stat. § 814.615(1) sets forth the fee structure for family court services, *viz.*, the first mediation session is as no fee, and all mediations after the first session have a single fee of \$200, regardless of the number of mediation sessions held. For a custody study, the fee is \$300. § 814.615(2) gives a county the option of establishing a fee schedule and sets forth the criteria to be considered. § 814.615(3) relates to payment of fees. § 814.615(4) requires the county to deposit fees collected under this section to be deposited into a separate account. This separate account is for the exclusive purpose of providing mediation services and studies.

Mueller explained that a \$20 fee is taken from the filing fee for family and paternity cases. The Clerk of Court (COC) puts the \$20 from each case into a segregated account. These monies are forwarded on a monthly basis to the county treasurer. Mueller stated that it has been done this way ever since she started as COC on January 1, 2011. Further, Mueller stated that, as far as she can tell and according to records she has reviewed, it has been done this way for the last ten years. As to the first mediation, there is no fee. As to all mediations after the first one, the fee is \$200 total. As to custody studies, Mueller stated that she could only find four cases, prior to Judge Voiland joining the bench, where a custody study had been ordered. Since he began, Judge Voiland has ordered a custody study in twelve cases; Judge Malloy and Judge Williams have not ordered any studies.

Mueller also explained that Ozaukee County passed a family custody study ordinance in 2016. Prior to the passage of the ordinance, Commissioner Boline had

ordered the parties to make deposits totaling \$1,000. In those cases, Judge Voiland had ordered the COC to refund all but \$300 of the deposits in each case. [Note that this would be pursuant to Wis. Stat. § 814.615(1)(a)3.] Mueller made those refunds. Mueller further explained that since the passage of the county ordinance, a fee schedule has been established. [Note that this is allowable under § 814.615(2).]

Mueller believes that the COC is in compliance with the Wisconsin Statutes. Mueller has sought the advice of Judge Malloy and Corporation Counsel Gorden. She advised that both Malloy and Gorden believe the COC is in compliance with the statutes. Mueller also sought the advice of Marcia Vandercook at the Office of State Courts. Mueller stated that Vandercook did not make any recommendations to change the current procedure.

Mueller noted that the Office of State Courts completed an audit of Ozaukee County's calendar year 2010 CS-147 Annual Report of Actual Revenues and Expenditures and issued a report on July 12, 2012. The report made recommendations relating to proper reporting of revenues and expenditures. I have reviewed this report and it does not specifically reference fees for mediation and studies.

In my opinion, the COC is in compliance with state law. However, to have full confidence in the procedure, I recommend that the Office of State Courts conduct an audit.

Finally, Commissioner Boline stated that he is the Director of Family Court Services. In that role, he appoints mediators. He also had involvement in coordinating with the Ozaukee County Department of Human Services (DHS) as to the present ordinance, effective July 2016, which gives the courts the authority to order the DHS to conduct custody and placement studies.

I find that Commissioner Barry Boline is the Ozaukee County Director of Family Court Services.

Other similar or related allegations as may be brought to your attention by any of the Ozaukee County judges or Chief Judge Jennifer Dorow.

11FA284 – State of Wisconsin et al v. Kevin M. Flood, Paternity Acknowledgment

Judge Voiland stated that he had ordered a study re: custody and placement but that Commissioner Boline had not followed this order.

Commissioner Boline stated that, after receiving this order, he spoke with Judge Malloy. Malloy directed Boline to tell the attorneys on this case that Ozaukee County does not do custody studies. At this time, Malloy and others were in the process of drafting a county ordinance relating to custody studies. Boline then drafted a letter to the attorneys stating that Ozaukee County family court services does not provide legal custody and physical placement studies. Boline then discussed this with Judge Voiland. He told Voiland that Voiland had given him an order and that Malloy had told him not to follow the order. Boline then told Voiland that he would follow his order but that Boline needed Voiland to “have his back” with the County Board. Boline stated that a county ordinance was eventually passed and became effective in July 2016. The ordinance authorizes the courts to order the Ozaukee County Department of Human Services to do a custody and placement study. Boline stated that since the ordinance has passed, there have been approximately five to six studies ordered.

Judge Malloy recalled that he was in the process of working on a county ordinance and that it was taking a while to get it drafted. He believes that he did tell Boline to hold off on ordering the home study ordered by Judge Voiland and did so because of the importance of maintaining a good relationship with the County Board. Malloy stated that he was trying to get the ordinance done and not trying to undermine Judge Voiland’s authority. The ordinance was eventually passed and became effective on July 2, 2016.

I find that Judge Voiland was correct was correct in his allegation about custody studies. I also find that Commissioner Boline was in an untenable position as he had

received inconsistent directions from Judge Voiland and Judge Malloy. I further find that Commissioner Boline was not attempting to usurp the authority of Judge Voiland. I find that Judge Malloy was not trying to usurp the authority of Judge Voiland but was attempting to maintain a good relationship with the County Board and working towards the passage of a county ordinance. I find that Judge Voiland did have the authority to order a custody study but should have been more cognizant of the importance of the County Judiciary maintaining a good relationship with the County Board. Fortunately, the County Board has subsequently passed an ordinance so this particular problem should not arise again.

Leah Goodman

Judge Voiland expressed a concern that he had ordered Leah Goodman to be held in custody and that Judge Malloy had subsequently ordered that Goodman be released. Judge Voiland believed that he had a legal basis to hold Goodman.

Judge Malloy stated that Goodman had filed a habeas petition which was assigned to him. This case was on his desk when he arrived at work on August 26, 2015. He attempted to discuss the case with Judge Voiland but Voiland was not in the courthouse. Malloy did not believe that there was any legal authority to hold Goodman and ordered that she be released.

I find that Judge Malloy acted in good faith and that he was not attempting to usurp the authority of Judge Voiland. I further find that the habeas petition required prompt action by Judge Malloy and that he attempted to discuss the case with Judge Voiland but that Voiland was not in the courthouse. I conclude that Judge Malloy acted properly in ordering the release of Leah Goodman because Malloy did not believe that there was any legal authority to hold her.

July 26, 2016 orders appointing 18 employees as “Deputy Register in Probate” and “Deputy Probate Registrar”

Judge Voiland expressed a concern that the orders were signed by Judge Malloy and Judge Williams but that he did not sign the orders.

Judge Malloy recalled that there was a judges’ meeting in July 2016; present were Judge Malloy, Judge Williams, Judge Malloy, probably Clerk of Court Mary Lou Mueller and Deputy Connie Mueller, possibly Chief Judge Randy Koschnick, and probably District Court Administrator Mike Neimon. Discussion included the appointment of deputy registers in probate (RIP) and deputy probate registrars (PR).

Subsequently, Neimon forwarded a template order probably to Mary Lou Mueller. Mueller converted the template to an order appointing Deputy RIPs and Deputy PRs. The proposed order was circulated. Judge Williams signed the order first, Judge Malloy then signed the order and then gave it to Judge Voiland’s judicial assistant so that Voiland could sign the order.

Malloy recalls that he was contacted by Neimon in mid-September asking about the order. Malloy then emailed Voiland and asked about the order. Voiland responded that he had seen the order and alluded to some problems he had with it including the fact that no interviews had been conducted. Malloy made Koschnick aware of the situation.

Malloy stated that he never envisioned the need to conduct interviews. Malloy stated that the order was to promote efficiencies in the system so that individual deputy clerks would be authorized to handle all types of various cases/matters. Voiland felt that he had no input into the decision. Malloy’s position was that Mary Lou Mueller supervises all of the deputy clerks, was aware of their qualifications to be Deputy RIPs and Deputy PRs, and, unless there is a problem, the judges should sign the order.

In approximately October 2016, Koschnick tasked Voiland with establishing a process for these appointments. Voiland contacted Ozaukee County Human Resources

(HR) about advertising for these positions. HR asked why this was necessary as there were not any positions that were vacant. Malloy told Voiland that if Voiland, “wants to hire new people, we have to let people go. If we don’t hire new people, we should appoint the people we have.” Voiland then dropped his request for interviews.

Chief Judge Koschnick approved (signed) the appointment order on October 28, 2016. This order was never signed by Judge Voiland. Wis. Stat. § 851.71 requires that “...the judges of the county shall appoint and may remove a register in probate. Appointments and removals may be made only with the approval of the chief judge.” Malloy stated that it was his opinion that this approval was by a majority of the judges. By his approval (signature) on the appointment order, Chief Judge Koschnick apparently agreed that approval of a majority of the judges was sufficient.

In my opinion, both Judge Malloy and Chief Judge Koschnick are correct; I believe that Wis. Stat. § 851.71 requires approval of a majority of the judges in the county and that it does not require unanimous approval. The order also references Wis. Stat. § 865.065 relating to “probate registrar.” This statute states in relevant part:

The acts and orders which this chapter specifies as performable by the probate registrar may be performed either by the court or by a person, including the clerk, deputy clerk, register in probate, deputy register in probate and court legal assistant, designated by the court by a written order filed and recorded in the office of the court.

I find that the order appointing Deputy RIPs and Deputy PRs became effective when it was signed by Chief Judge Koschnick on October 28, 2016 and that the requirements of Wis. Stat. §§ 851.71 and 865.065 were followed.

16PR91 – In the Estate of Lawrence E. Foreman

Judge Voiland expressed a concern that the Clerk of Court did not follow his order. This is a probate case where Judge Voiland had signed an order, dated July 14, 2016, scheduling a hearing in October 2016 in Branch 3 (Judge Williams). This occurred right

before August 1, 2016 when Voiland was rotating out of probate and Williams was rotating in. Williams gave this order back to Voiland with two post-it notes questioning why Voiland had scheduled this before her. The Clerk of Court did not file the order until after Malloy had told her to do so. In the end, Voiland ended up keeping the case as was his prerogative.

Judge Williams stated that she returned the order containing her post-it notes to Voiland because, in her opinion, Voiland could have had the final hearing before the rotation occurred. Williams stated that Voiland ignored the post-it notes and did not respond to her.

I find that Clerk of Court Mary Lou Mueller was not attempting to usurp the authority of Judge Voiland but that she was in an untenable position since she had received conflicting directives from Judge Voiland and Judge Williams. I find that, while both Judge Voiland and Judge Williams acted within their authority, it would have been more prudent to have a private in-person discussion regarding this case. I find no wrongdoing on the part of anyone.

CONCLUSIONS

In my opinion, the conclusions and findings of this investigation do not hinge on a credibility determination. Everyone who was interviewed was credible. But everyone answered questions from his/her own individual perspective. As to Judge Voiland's allegations, I find that no criminal activity has occurred but, as noted above, some of his allegations uncovered errors by the Clerk of Courts. I also note that communication between Judge Voiland and the others involved is a serious problem. While conducting the investigation and in preparing this report, I often wondered why the people involved did not meet in person to discuss these issues. I am not certain that this would have resulted in agreement; indeed, as to any of the issues raised, they may have agreed to disagree. But as a fair and impartial, neutral and detached outsider and a former judge, I question how this situation could have evolved to the extent that it has. My

strong suggestion is that, going forward, all involved attempt to resolve any differences of opinion among themselves in a professional and respectful manner.

FINDINGS

Having reviewed the relevant documents and considered the statements of those with relevant and material knowledge, I find the following:

1. There is no basis to believe that anyone has violated Wis. Stat. § 946.12, Misconduct in Public Office.
2. There is no basis to believe that anyone has violated any other criminal statute.
3. The Clerk of Courts has made certain errors as described above. The Clerk of Courts has acknowledged those errors, has either corrected or is in the process of correcting those errors, and has taken appropriate steps to ensure that those types of errors will not reoccur.
4. The Clerk of Courts has taken appropriate steps to comply with the statute relating to segregation of fees on family cases although this remains a work in progress. I recommend that the Presiding Judge, the Clerk of Courts, the Corporation Counsel and the County Treasurer continue their joint efforts to ensure that Ozaukee County remains in statutory compliance.
5. The Director of Family Court Services for Ozaukee County is Court Commissioner Barry Boline.
6. There is a serious communication problem between Judge Voiland and other Ozaukee County court officials, particularly between Judge Voiland and Clerk of Courts Mueller and, to a lesser extent, between Judge Voiland and Presiding

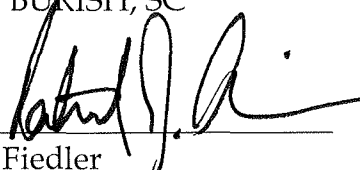
Judge Malloy. This communication problem has resulted in a lack of trust which has affected the administration of the court system.

RECOMMENDATIONS

1. The Office of State Courts should conduct an audit of the Ozaukee County Clerk of Courts Office to determine if it is in compliance with Wis. Stat. § 815.615.
2. The Ozaukee County Officials interviewed for purposes of this investigation should endeavor to communicate and cooperate with each other in a professional and timely manner.

Respectfully submitted this 3rd day of July, 2018.

HURLEY BURISH, SC



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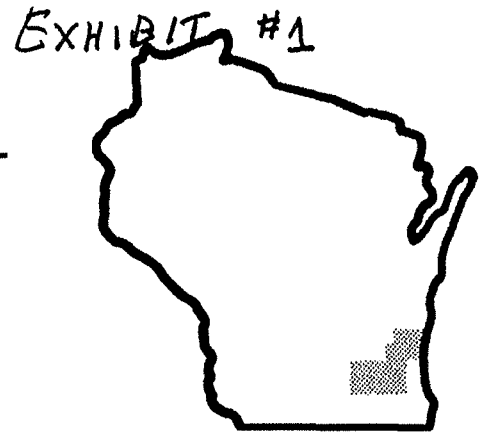
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STATE OF WISCONSIN

THIRD JUDICIAL DISTRICT

WAUKESHA COUNTY COURTHOUSE
515 WEST MORELAND BLVD., ROOM C-359
WAUKESHA, WISCONSIN 53188

OFFICE (262) 548-7210
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February 26, 2018

Charge: Under the direction of the Third Judicial District Chief Judge Jennifer Dorow, to investigate claims by Judge Joseph Voiland concerning Ozaukee County Officials, including the following (allegations are in summary form. Please consult with Judge Voiland regarding specifics and supporting documentation).

1. Alteration and/or deletion of CCAP records by the Clerk of Circuit Court/Register in Probate, including but not limited to back dating of case assignments, removal of hearings from calendar, correction of docket entries without proper case file documentation/notation, and destruction of case files. (If these actions occurred in the past, determine whether they are continuing).
2. Misuse of Register in Probate/Probate Registrar authority, including but not limited to granting of adjournments in formal cases and improper designation of cases (formal vs. informal and the interplay between the two and whether such actions were done without the approval of the assigned judge) and the reason(s) for doing so.
3. Custody Study and related issues, including but not limited to the failure of the county treasurer to segregate statutory fees as required by Wis. Stat. § 814.615, and the failure to name and appoint a director of family court services as required by Wis. Stat. § 767.405(1m)(a).
4. Other similar or related allegations as may be brought to your attention by any of the Ozaukee County judges or Chief Judge Jennifer Dorow.

Judge Joseph W. Voiland

1. June 10, 2016 interview with DOJ

- A. 13PR84; "In the Estate of Mary H. Malinowski" – date changed for OTSC hearing; case description changed from "formal" to "informal";
- B. 13PR130; "In the Estate of Emanuel Washington" – doesn't know how this case had suddenly appeared in his docket calendar; the transaction record shows Mary Lou Mueller had assigned this case to Voiland on 3/31/16 and that she had back-dated the case assignment to 7/13/14;
- C. 11FA310; "In RE the marriage of Robert Roland Hanke and Antonia E. Hanke" – Judge Williams had appointed a GAL on this case even though it was assigned to Voiland;
- D. Voiland stated that Commissioner Boline was labeled as doing family court services, but that Boline does not do anything related to family court services;
- E. 11FA284; "State of Wisconsin et al v. Kevin M. Flood, re: Paternity Acknowledgment"; Voiland had given an order to do a study re: custody and placement; letter dated 6/8/15 from Commissioner Boline to case attorneys advising that Ozaukee County family court services does not provide legal custody and physical placement studies; Voiland doubts that Boline sent this letter
- F. Under § 814.61(1)(b), costs associated with family court services are to be partly funded by filing fees, held in a separate account; filing fees are supposed to be put in a separate account and maintained by the County Treasurer;
- G. Voiland stated that every year Boline and Malloy told Voiland they would set up Family Services and studies "next year";
- H. John Doe cases – 16JD2 was destroyed;
- I. Voiland held Leah Goodman held in custody – Malloy ordered Goodman to be released;
- J. Voiland "dashboard" – cases not on his dashboard one month, then the next month a case would show "overdue/late" by a significant amount of time, that they should have showed late in a prior month;

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2. June 20, 2016 interview with DOJ

A. Voiland had gone to the CCAP office in Madison on May 23, 2016 and reviewed a number of files;

B. Voiland stated probate cases can be assigned to the Clerk of Courts, Mary Lou Mueller, which Mueller can then assign to the judges. Voiland stated Mueller had assigned cases to Voiland which she had falsified by back-dating the dates of the case assignments of cases she had assigned to Voiland;

C. GAL paperwork and fees

D. Paperwork missing from files

E. Jury qualification questionnaires

F. Copy of a printout of Voiland's probate docket, listing case volumes of pending cases between July of 2015 and January of 2016; Voiland stated there was a "70% spike" in January of 2016 in the number of cases assigned to him. In April of 2016, when Voiland asked Mueller what was going on, the large increase in the number of cases stopped and the number of cases assigned to Voiland "leveled off."

G. 15PR17; "In the Estate of Janice E. Garsha" – COC changed the case designation from "Formal Administration" to "Informal Administration" without telling Voiland.

H. 15PR79; "In the Estate of Kenneth E. Goetschel" – changed from "formal" to "informal" without Voiland's authorization.

I. John Doe cases – 16JD2 was destroyed and erased

J. Electronic signature of Voiland used by others

3. September 15, 2016 interview with DOJ

A. July 26, 2016 order appointing 18 employees as "Deputy Register in Probate" and "Deputy Probate Register." Signed by Malloy and Williams but not signed by Voiland or Koschnick.

B. 16PR91 – failure of COC to follow Voiland orders; post-its from Sandy Williams